IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14344 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOMIN MOHAMMAD AKBAR GULAM KASAM (MINOR) - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MUKUL SINHA for Petitioner(s) : 1,
MS MANISHA SHAH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged the order passed by the Director of Developing Caste Welfare Department, respondent No.3

herein by which the caste certificate granted to the petitioner by the District Social Welfare Officer came to be cancelled.

2. Shortly stated, facts leading to the present petition are as follows:-

The petitioner claims to be belonging to Muslim Julaya community which community is categorized as Socially and Educationally Backward Class Community (SEBC for short). The family of the petitioner carries the surname of Momin. It is the case of the petitioner that majority of the Momins of the State of Gujarat are weavers by occupation since generations. Julaya community is a generic term signifying weavers amongst Muslims. It is this community which has been notified as SEBC by the State Government accepting the recommendations made by the Baxi Panch in the year 1978.

3. The petitioner was in fact granted caste certificate by the Social Welfare Officer by an order dated 26.7.96. On the basis of this caste certificate

and availing benefits of reservation in favour of SEBC communities, the petitioner after clearing his 12th standard examination from the Gujarat Board secured admission in Ayurved college in the State. After about two months of pursuing his studies, the petitioner received a show cause notice dated 2.6.2005 issued by respondent No.3. In the said show cause notice, the petitioner was called upon to remain present with all supporting documents since the authority was of the opinion that the caste certificate issued in favour of the petitioner created suspicion.

3.1 In response to the notice, the petitioner replied to respondent No.3 under communication dated 10.6.2005. In his representation, the petitioner contended before the said authority that the petitioner is a resident of Lilajpur area of Dholka Taluka. He belongs to Momin community. Since generations traditionally they have been engaged in weaving work which is continued even presently. The petitioner relied on Urdu-Gujarat dictionary wherein term Julaha has been described as a Muslim community

engaged in weaving of cloth. He stated that the term has Arabic origination and is used in Urdu as well as in Hindi languages. He further stated that in Gujarat, the term is referred to as Julaya, a Muslim community engaged in cloth weaving. The petitioner also placed reliance on the extract of a book called "People of India" by Shri K.S.Singh which was published by the Anthropological Survey of India in which also term Julaha has been explained. The petitioner produced certain documents in support of his case. He produced his school leaving certificate as well as that of his brothers. He produced a sale deed entered into by his grand-father on 4th January 1967 in which his grand-father was stated to be doing the work of weaving. He also produced certificate of the Municipality of having given small pox/chicken pox vaccine to his mother on 2.11.54. He also placed reliance on certain other documents.

4. The petitioner had approached this Court at a stage when show cause notice dated 2.6.2005 was isused by respondent No.3. During the pendency of the petition, however, respondent No.3 passed final

order on 13.9.2005. On the basis of the material on record, the said authority came to the conclusion that the caste certificate issued in favour of the petitioner could not be sustained. He, therefore, provided that the caste certificate be cancelled.

5. The petitioner suitably amended the petition and included his challenge to the subsequent order dated 13.9.2005 passed by respondent No.3.

6. It is the case of the petitioner that Muslim religion is not caste based and that therefore there are no distinct castes unlike among Hindu religion. It is the case of the petitioner that Memons in Gujarat are weavers and since generations they have been traditionally carrying on the work of cloth weaving. It is the case of the petitioner that "Julaya" or "Julaha" is a generic term signifying the weaving community of Muslims and Momins of Gujarat and particularly those settled in and around Dholka are Julayas. It is further the case of the petitioner that simply because the surname of the family of the petitioner is not Julaya that by

itself would not conclude that the petitioner does not belong to the said community. It is also the case of the petitioner that the authority did not properly examine the evidence on record. It is contended that there was sufficient evidence on record to suggest that since generations, the family of the petitioner has been engaged in weaving work. The caste certificates issued by the Social Welfare Officer and the Mamlatdar later on were, therefore, just and proper and respondent No.3 erred in cancelling such caste certificates.

7. Learned advocate Shri Mukul Sinha appearing for the petitioner placing reliance on the material on record submitted that the order passed by the authority is required to be quashed. He pointed out that learned single Judge of this Court in a decision dated 17.1.2004 passed in Special Civil Application No.15578 of 2003 and connected matters in the case of Imran Ali Rajabhai Polara v. State of Gujarat had taken into consideration similar situation and was pleased to direct respondent No.3 to pass fresh order after examining the relevant details. Certain portion

of the said decision which are important for the purpose of this petition will be referred to at a slightly later stage.

7.1 Learned advocate Shri Sinha further submitted that on the basis of the directions issued by this Court in the said decision in the case of Imran Ali Rajabhai Polara (supra), respondent No.3 after carrying out a detailed exercise came to the conclusion that Momins of Kanodar village are Julayas. He had, therefore, by a reasoned order dated 14.6.2004 recalled the earlier order cancelling the caste certificates of the concerned students.

7.2 Learned advocate Shri Sinha further submitted that the material placed before the authority in the said case was similar to that produced by the petitioner in the present litigation and that therefore respondent No.3 could not have taken a different view.

8. In support of the challenge, learned advocate for the petitioner has placed reliance on

several documents. It is contended that Urdu-Gujarat dictionary refers the term Julaya as a Muslim community which is engaged in cloth weaving. He pointed out that before the authority, the petitioner had produced material in the form of extracts of a book by Shri K.S.Singh, People of India in which it has been clearly stated that Momins of Gujarat are weavers and are engaged in cloth weaving since generations.

8.1 It was further contended that respondent No.3 gravely erred in rejecting the contentions of the petitioner. He pointed out that quite apart from the general material to establish that Momins of Dholka have been engaged in cloth weaving work since generations, even in case of the petitioner, the petitioner had succeeded in producing evidence on record to suggest that the family of the petitioner has been engaged in the said work since generations. He pointed out that the grand-father of the petitioner had purchased property by registered document in the year 1964 in which his occupation was referred to as weaver. He submitted that the brother

of the petitioner was also granted similar certificate by the competent authority. The petitioner had received caste certificate in the year 1996 and again in the year 2003. Many years thereafter, respondent No.3 without any basis sought to cancel such a caste certificate. In the meantime, the petitioner had already secured admission in professional course and had also pursued his studies for about two months.

8.2 It is further contended that respondent No.3 has not properly appreciated the issues arising. He submitted that in the impugned order as well as in the affidavit in reply dated dated 5.10.2005 field by one Shri M.P.Thakar on behalf of the respondents, it is averred that Momins of Gujarat are largely converts from Patel community. He submitted that there is no basis for such an assertion and in any case, source for such a conclusion is not revealed by the respondents. He submitted that in fact, there is evidence on record to suggest that Momins have been traditionally engaged in cloth weaving work. He placed on record a Government of Gujarat publication

of Ahmedabad District Gazetteer in which also, it is stated that Momins are mainly cotton weavers while some of them also weave silk sarees and sell cotton rope and tape.

8.3 He further contended that respondent No.3 in the impugned order has placed too much reliance on the decision of the Hon'ble Supreme Court in the case of Madhuri Patil v. State of Maharashtra, (1994) 6 SCC 241. He submitted that there is over reliance on the question of school leaving certificate of the petitioner and non-mentioning of the petitioner belonged to Julaya community in the school records. He submitted that the authority has misdirected itself insisting that after 1978 (when Julaya community was notified as SEBC) no material can be taken into account.

9. Learned AGP Ms.Shah appearing for the respondents supported the order passed by the authorities. She submitted that the petitioner failed to establish his case that he belongs to Julaya community. The petitioner is described in school

records as belonging to Momin community. Momins are not necessarily Julayas. It was, therefore, imperative that the petitioner establishes before the authorities that his family was engaged in weaving works since generations. She submitted that the order passed by respondent No.3 on 14.6.2004 pursuant to the directions issued by this Court in the case of Imran Ali Rajabhai Polara (supra) cannot be applied in the facts of the present case. In the said decision, respondent No.3 while allowing the claim of the concerned students by his order dated 14.6.2004 specifically provided that the order shall not apply to other members of the Momin community in the State of Gujarat. The order was confined to Momins of Kanodar village since on the basis of the available material on record, such claimants had succeeded in establishing before the authority that they actually belong to weaver community.

9.1 She further submitted that school records of the petitioner does not describe him as Julaya. Only with a view to getting benefit of reservation, the petitioner has set up a case of belonging to Julaya

community. She placed reliance on the observations made by the Hon'ble Supreme Court in the case of Madhuri Patil (supra). She further submitted that the authority has taken into account all relevant aspects of the matter and passed a detailed speaking order and this Court, therefore, in exercise of powers under Article 226 of the Constitution will not examine the order as an appellate authority. In short, she urged that the petition be rejected.

10. In case of Imran Ali Rajabhai Polara (supra) this Court while turning down the contention of the petitioners therein that the caste certificate once granted cannot be recalled, came to the conclusion that whether Momin community of Kanodar village belong to Julaya community requires reconsideration. The learned Judge observed that though in case of Madhuri Patil (supra), it is observed that for the purpose of deciding the caste status best possible evidence would be that of the school records, it does not mean that students or the parents are not permitted to lead any other evidence in support of their claims that they belong to SEBC class. In this

regard, it was further observed that

> "The aforesaid observations of the Hon'ble Supreme Court in Kum. Madhuri Patil vs. State of Maharashtra (Supra) or the aforesaid observations made by the learned Single Judge of this Court in the in the case of Asif Shaukat Hussainbhai Kadiwala vs. State of Gujarat (Supra), do not detract from the fact that if the persons defending the caste certificates can show relevant or reliable material in support of their claim of belonging to a particular community, the same has to be considered. No doubt, the documents after declaration of the policy or publication of the SEBC lists are required to be examined with much more care and caution, but that does not necessarily mean that those documents need to be viewed with outright prejudice."

The learned Judge thereafter taking into account the material produced by the petitioners provided that the submissions made by the petitioners be taken into account to decide whether the community of Muslim weavers in Kanodar village constitute socially and educationally backward class. Learned Judge also observed that the Director seems to have carried the matter a little too far in suggesting that the petitioner had placed fraud in obtaining certificate from the District Social Welfare Officer. With these directions, the petition was disposed of. With respect to the claim of the petitioners for the academic term of the year 2003-04, however, it was observed that it is too late to give any direction firstly because the Court has only quashed the order for fresh inquiry and secondly the admission process

for medical and engineering colleges and other professional courses was already over. It was further provided that the matter shall be decided expeditiously and in any case before 31st May 2004 so that the case of the petitioners if ultimately found to be belonging to SEBC community, their can be considered for admission for various courses for the academic year 2004-05.

11. On the basis of these directions, respondent No.3, in case of Momins of Kanodar village undertook the exercise of examining the evidence produced by the petitioners therein and by the order dated 14.6.2004, he came to the conclusion that said Momin community of Kanodar have been traditionally engaged in weaving work and they are Julaya community and the earlier order passed by him cancelling the caste certificates came to be withdrawn. In the said order dated 14.6.2004, respondent No.3 observed that except a minor portion, whole Momin community is converted from Leuva and Kaduva Patels. In the impugned order also, respondent No.3 has been pleased to reiterate this statement. In the affidavit in reply dated 5th

October, 2005 field by Shri M.P.Thakar, it is further stated that the term "Momin" is an adjective and is applicable to all Muslims. I do not find any source indicated by the authorities for such a conclusion.

12. Eventually, respondent No.3 in his order dated 14.6.2004 held that Memon of Kanodar village are weavers and therefore would be eligible to receive benefits of reservation of SEBC provided for Julaya community and such reservation will not be available to members of Momin, Mooman, Muma community spread all over Gujarat.

13. In the impugned order, respondent No.3 came to the conclusion that ancestors of the petitioner are not shown to have been engaged in weaving work. He concluded that only to seek benefit of reservation, such claim is being set up. He relied on the school records of the petitioner. He, however, observed that though in certain books, it is indicated that Muslim Momin and Muslim Julaya are predominantly weavers, he was of the opinion that though two communities may be following same

vocation that by itself would not demonstrates that they are one and same community.

14. To my mind, respondent No.3 did not address himself the issues as required. As noted earlier, this Court in the case of Imran Ali Rajabhai Polara (supra) had made certain observations and laid down parameters for consideration at the hands of respondent No.3 to verify whether Momins of Kanodar village are weavers and that therefore Julayas or not. A similar exercise was required to be undertaken in the case of the present petitioner. Pursuant to the order passed by this court in the case of Imran Ali Rajabhai Polara (supra), respondent No.3 by his order dated 14.6.2004 came to the conclusion that Momins of Kanodar village are Julayas. This by itself may not be conclusive of the question whether the Momins of Dholka would also belong to Julaha community or not. However, the question that calls for consideration was whether such Momins have been engaged in occupation of cloth weaving since generations and therefore were weavers and therefore covered by the term "Julaya" which in

turn is a reserved community under the Socially and Educationally Backward Class. This attempt, in my view, was not made by respondent No.3. In fact, there was substantial evidence on record to suggest that groups of Momin communities have been traditionally engaged in weaving work since generations. In fact, respondent No.3 also agreed that in certain books there is a reference that both Momins and Julayas are predominantly engaged in the vocation of cloth weaving. In fact the Gazette produced by the petitioner also demonstrates that Momins of Ahmedabad district have been predominantly engaged in weaving work. I have already noted a portion of the said Gazette in the earlier part of the judgment wherein the Gazette records that Momins are mainly cotton weavers while some of them also weave silk sarees.

15. The word "Julaya" in Urdu-Gujarati dictionary is described as muslim community engaged in cloth weaving. In Bhagwat Dromandal, the word "Julaya" is described as one of the communities of Momin Ghrarana and Tariyani. It can thus be seen that

simply because the family of the petitioner carried a surname of the Momin that by itself was not conclusive of the caste status. If the Momins of Dholka taluka had been engaged since generations predominantly in weaving work, they had to be included in the term "Julaya". Inquiry before the respondent no.3 therefore, had to be two fold. Firstly, an attempt was required to be made whether Momins of Dholka Taluka have been engaged in such work traditionally since generations and whether the family of the petitioner also was traditionally a family of weavers. Answer to these questions, if was in the positive, the petitioner's case ought to have been accepted.

16. Simply because the surname of the petitioner happens to be Momin, that by itself was not sufficient to dis-entitle him from claiming benefits of reservation. As observed by learned Single Judge of this Court in the case of Imran Ali Rajabhai Polara (supra), a certain name will not be the only material which would be conclusive.

17. The petitioner had produced number of documents in support of his case. The petitioner had produced sale deeds entered into by his grandfather, evidence from the Municipality with respect to his mother's vaccination and such other relevant materials which needed to be examined to come to a proper conclusion. Additionally, the petitioner has also placed reliance on the Government Gazette as well as extracts from certain authentic books. In fact some of these materials were relied upon by respondent no.3 while passing the earlier order on 14-6-2004 to come to the conclusion that Momin of Kadana are weavers and, therefore, entitled to reservation provided for Julaya community. Similar attempt was to be made in the present case, which in my opinion was not properly done. However, these are questions of fact which cannot be concluded by this Court in the writ jurisdiction. The entire issue shall have to be reconsidered by respondent no.3 bearing in mind the above observations. To reiterate, the task before the respondent no.3 would be that the respondent no.3 should ascertain whether Momins of Dholka Taluka have been traditionally the weavers and engaged in

predominant weaving work since generations and whether the petitioner also hails from one such family. On the basis of answers to these questions, the ultimate decision of the respondent no.3 would depend.

18. For the above purpose, the impugned order is quashed. The respondent no.3 shall take a fresh decision in accordance with law bearing in mind the above observations. It will be open for the petitioner to produce additional evidence which he shall do within four weeks from today. Upon receipt of such additional material and giving an opportunity to the petitioner to make an additional representation, respondent no.3 shall take a fresh decision in accordance with law and in any case within four months of receipt of such additional material as provided above.

19. For the current academic year, no relief can be granted to the petitioner however, upon passing of fresh orders, status of the petitioner shall be governed for future academic years.

20. The petition is allowed accordingly. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(vjn)